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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,008	08/07/2006	Toshiharu Suzuki	3749-0112PUS1	7226
2292 7590 01/27/2010 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER CHERNYSHEV, OLGA N				
ART UNIT		PAPER NUMBER		
1649				
NOTIFICATION DATE		DELIVERY MODE		
01/27/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/577,008

Applicant(s)

SUZUKI ET AL.

Examiner

Olga N. Chernyshev

Art Unit

1649

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 20

Claim(s) objected to: _____

Claim(s) rejected: 10

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

/Olga N. Chernyshev/
Primary Examiner, Art Unit 1649

Continuation of 5. Applicant's reply has overcome the following rejection(s): 112, second, sections 8-14; 112, first, section 16; and 102(b), section 19 of Paper of 10/05/2009.

Continuation of 11. does NOT place the application in condition for allowance because: The request for consideration has been fully considered. At p. 3 of the Response, Applicant submits that "Claim 10 has been amended as suggested by the Examiner, i.e. to be drawn to the use of brain tissue samples and the specific peptide fragments". However, claim 10 has been amended to recite use that is not supported by the specification as filed. Specifically, the original rejection of record applied to claim 10, which outlines the allowable subject matter, reads as follows:

"16. Claims 7-12 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for methods of diagnosis of Alzheimer's disease (AD) by detecting specific fragments of Alcadein in brain tissue of a patient etc.", see paper of 07/07/08. The instant claim 10 expressly recites measurements of the levels of Alcadein fragments (peptides of SEQ ID NO: 4 to 12) and the specification fails to provide any support and guidance as how to practice the method as claimed because it is limited to demonstration of colocalization of Alcadein and APP in the brain of AD patients and absence of such colocalization in normal control samples. Therefore, claim 10 stands rejected as not being enabled under 112, first paragraph. Claim 10, if directed to diagnostic method using samples of brain tissue to detect colocalization of specific fragments of the polypeptide of SEQ ID NO: 1 with APP, is enabled and appears to be free of prior art..